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9 Attorneys for Defendant  
10 KEVIN MURRAY

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 CHRISTOPHER RASKU

Case No. 3:20-cv-01286-LB

14 Plaintiff,

**DEFENDANT KEVIN MURRAY'S ANSWER TO  
PLAINTIFF'S COMPLAINT**

15 v.

16 CITY OF UKIAH and KEVIN MURRAY

17 Defendants.

19  
20 Defendant KEVIN MURRAY hereby demands a jury trial in the above-captioned matter and  
21 answers plaintiff CHRISTOPHER RASKU's complaint filed on February 20, 2020 as follows:

22 **ANSWER TO ALLEGATIONS ENTITLED "JURISDICTION AND VENUE"**

23 1. Answering paragraphs 1 and 2, this answering defendant does not dispute jurisdiction, and  
24 further admits the incidents, events, and occurrences giving rise to this action occurred in the City of  
25 Ukiah, County of Mendocino, California. This answering defendant denies that any actions or omissions  
26 by defendant give rise to liability.

27 **ANSWER TO ALLEGATIONS ENTITLED "PARTIES"**

28 2. Answering paragraph 3, this answering defendant admits that plaintiff is a resident of

1 Mendocino County, California.

2       3. Answering paragraph 4, this paragraph contains allegations that relate to plaintiff's *Monell*  
3 claim which was dismissed by this Court, and thus do not call for an admission or denial at this time.

4       4. Answering paragraph 5, this answering defendant admits that at all relevant times,  
5 Defendant KEVIN MURRAY was a police officer and employee of the City of Ukiah.

6       5. Answering paragraph 6 through 7, these paragraphs contains legal conclusions that do not  
7 call for an admission or denial. To the extent any allegations in these paragraphs can be construed as  
8 calling for an admission or denial, this answering defendant denies each and every such allegation within  
9 these paragraphs.

10      6. Answering paragraph 8, answering defendant admits the allegations contained within this  
11 paragraph.

12      7. Answering paragraph 9, this paragraph contains allegations that relate to plaintiff's *Monell*  
13 claim which was dismissed by this Court, and thus does not call for an admission or denial.

14           **ANSWER TO ALLEGATIONS ENTITLED "STATEMENT OF FACTS"**

15      8. Answering paragraph 10, this answering defendant admits that plaintiff is forty-six years  
16 old and resides in Ukiah, California. Answering defendant lacks sufficient information to enable him to  
17 admit or deny the remaining allegations contained in this paragraph, and on that basis denies each and  
18 every remaining allegation within this paragraph.

19      9. Answering paragraph 11, this answering defendant admits that plaintiff lives in an  
20 apartment complex on North Orchard Avenue in the City of Ukiah. Answering defendant further admits  
21 that the events giving rise to this complaint occurred on October 13, 2018. Answering defendant lacks  
22 sufficient information to enable him to admit or deny the remaining allegations contained in this  
23 paragraph, and on that basis denies each and every remaining allegation within this paragraph.

24      10. Answering paragraph 12, this answering defendant admits that plaintiff was standing in  
25 his doorway when Officer MURRAY arrived. Answering defendant denies that plaintiff was standing  
26 behind his door. Answering defendant lacks sufficient information to enable him to admit or deny the  
27 remaining allegations contained in this paragraph, and on that basis denies each and every remaining  
28 allegation within this paragraph.

1       11. Answering paragraph 13, this answering defendant lacks sufficient information to enable  
2 him to admit or deny the allegations contained in this paragraph, and on that basis denies each and every  
3 allegation within this paragraph.

4       12. Answering paragraph 14, this answering defendant admits that Officer MURRAY ordered  
5 plaintiff to take a seat on the ground outside his apartment. Answering defendant further admits that  
6 plaintiff refused to comply with Officer MURRAY's order. Answering defendant further admits that  
7 Officer MURRAY placed plaintiff's left hand in handcuffs. Answering defendant further admits that  
8 Officer MURRAY delivered closed-fist strikes to plaintiff. Answering defendant further admits that  
9 Officer MURRAY delivered knee strikes to plaintiff's rib cage. Answering defendant denies that plaintiff  
10 stated that he would stand where he was. Answering defendant further denies that Officer MURRAY  
11 acted without exigency or legal justification. Answering defendant further denies that Officer MURRAY  
12 charged at plaintiff's door. Answering defendant further denies that Officer MURRAY threw his  
13 shoulder into plaintiff's door. Answering defendant further denies that plaintiff was knocked  
14 unconscious. Answering defendant lacks sufficient information to enable him to admit or deny the  
15 remaining allegations contained in this paragraph, and on that basis denies each and every remaining  
16 allegation within this paragraph.

17       13. Answering paragraph 15, this answering defendant admits that Officer MURRAY was  
18 wearing a body-worn camera during the encounter. Answering Defendant denies that Officer MURRAY  
19 did not have the body-worn camera activated during the encounter.

20       14. Answering paragraph 16, this answering defendant admits that officers arrived and  
21 assisted in placing plaintiff in handcuffs. Answering defendant further admits that officers carried  
22 plaintiff outside his apartment and placed him into the backseat of a patrol vehicle. Answering defendant  
23 denies that officers "picked [plaintiff] up from the ground by the chain of the handcuffs ..." Answering  
24 defendant lacks sufficient information to enable him to admit or deny the remaining allegations contained  
25 in this paragraph, and on that basis denies each and every remaining allegation within this paragraph.

26       15. Answering paragraph 17, this answering defendant lacks sufficient information to enable  
27 him to admit or deny the allegations contained in this paragraph, and on that basis denies each and every  
28 allegation within this paragraph.

1       16. Answering paragraph 18, this answering defendant admits that Officer MURRAY  
2 authored a police report stating that plaintiff had slammed his apartment door on Officer MURRAY's  
3 arm and attempted to punch Officer MURRAY. Answering defendant further admits that the encounter  
4 was recorded by plaintiff's neighbor. Answering defendant denies the remaining allegations contained  
5 within this paragraph.

6       17. Answering paragraph 19, this answering defendant admits that a criminal complaint  
7 charging plaintiff with felony resisting arrest was filed in Mendocino County Superior Court. Answering  
8 defendant further admits that plaintiff was offered pre-trial diversion. Answering defendant denies that  
9 Officer MURRAY perjured himself at plaintiff's preliminary hearing.

10      **ANSWER TO ALLEGATIONS ENTITLED "STATEMENT OF DAMAGES"**

11       18. Answering paragraph 20 through 22, this answering defendant denies that any acts or  
12 omissions by him give rise to liability. This answering defendant lacks sufficient information to enable  
13 him to admit or deny the remaining allegations contained in these paragraphs, and on that basis denies  
14 each and every remaining allegation within these paragraphs.

15       19. Answering paragraph 23, this answering defendant denies that any acts or omissions of  
16 this answering defendant give rise to liability and further denies the acts and omissions of Officer  
17 MURRAY were willful, wanton, reckless, malicious, oppressive and/or done with a conscious or reckless  
18 disregard for the rights of plaintiff. The remainder of the paragraph contains legal conclusions that do not  
19 call for an admission or denial. To the extent any remaining allegations in this paragraph can be  
20 construed as calling for an admission or denial, this answering defendant denies each and every such  
21 allegation within this paragraph.

22       20. Answering paragraph 24, this answer defendant admits plaintiff retained counsel to  
23 represent him in this matter. This answering defendant denies the remaining allegations contained within  
24 this paragraph.

25      **ANSWER TO ALLEGATIONS ENTITLED "FIRST CAUSE OF ACTION"**

26       21. Answering paragraph 25, this paragraph does not contain allegations that call for an  
27 admission or denial.

28       22. Answering paragraphs 26 through 29, this answering defendant denies all allegations

1 contained within these paragraphs.

2           **ANSWER TO ALLEGATIONS ENTITLED “SECOND CAUSE OF ACTION”**

3       23. Answering paragraph 30, this paragraph does not contain allegations that call for an  
4 admission or denial.

5       24. Answering paragraphs 31 through 34, this answering defendant denies all allegations  
6 contained within these paragraphs.

7           **ANSWER TO ALLEGATIONS ENTITLED “THIRD CAUSE OF ACTION”**

8       25. Answering paragraphs 35 and 36, these paragraphs contain allegations that relate to  
9 plaintiff’s *Monell* claim which was dismissed by this Court, and thus do not call for an admission or  
10 denial.

11           **ANSWER TO ALLEGATIONS ENTITLED “PRAYER FOR RELIEF”**

12       26. Answering the paragraphs entitled “Prayer for Relief,” these paragraphs detail plaintiff’s  
13 requested relief and do not contain allegations that call for an admission or denial.

14           **AFFIRMATIVE DEFENSES**

15           **FIRST AFFIRMATIVE DEFENSE**

16       Plaintiff’s complaint fails to state facts sufficient to constitute a cause of action against answering  
17 defendant.

18           **SECOND AFFIRMATIVE DEFENSE**

19       Plaintiff’s claims are barred by the doctrines of laches, estoppel and waiver, and by all applicable  
20 federal and state statutes of limitation.

21           **THIRD AFFIRMATIVE DEFENSE**

22       Answering defendant at all times referred to in plaintiff’s complaint acted in complete good faith  
23 and reasonably within the meaning of all federal and state statutes, doctrines and judicial authorities.

24           **FOURTH AFFIRMATIVE DEFENSE**

25       Answering defendant is immune from liability under the federal doctrine of qualified good faith  
26 immunity as set forth in *Malley v. Briggs*, 475 U.S. 335 (1986), *Harlow v. Fitzgerald*, 457 U.S. 800  
27 (1982), *Anderson v. Creighton*, 107 S.Ct. 3034 (1987) and other applicable statutory and judicial  
28 authorities.

## **FIFTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to sufficiently allege a cause of action on any federal claim for relief. Plaintiff has been denied no federally protected civil right without due process of law, since due process exists in the form of adequate remedies at law.

## **SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's complaint fails to state a claim for any constitutional violation under 42 U.S.C. Section 1983 against this answering defendant.

#### **SEVENTH AFFIRMATIVE DEFENSE**

Answering defendant's alleged acts were reasonable under the doctrine set forth in *Graham v. Connor*, 108 S.Ct. 1865 (1989) and all other applicable federal and state judicial authorities.

## **EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff voluntarily assumed the risk of injuries and damages arising out of the subject incident and said assumption of risk acts as a complete bar to any recovery in this matter.

## **NINTH AFFIRMATIVE DEFENSE**

As a separate, distinct affirmative defense to the complaint, answering defendant alleges that plaintiff posed a direct threat to the health and safety of others and/or himself.

## **TENTH AFFIRMATIVE DEFENSE**

Plaintiff's detention and/or arrest were proper in that the detention and/or arrest was supported by sufficient probable cause.

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## **PRAAYER FOR RELIEF**

WHEREFORE defendant KEVIN MURRAY prays that:

1. Plaintiff take nothing by reason of his complaint;
  2. Defendant be awarded its costs of suit incurred herein and its attorneys' fees pursuant to S.C. Section 1988 and all other applicable federal and state statutes and judicial authorities; and, Plaintiff be granted such further relief as the Court deems proper.

Dated: May 29, 2020

# BERTRAND, FOX, ELLIOT, OSMAN & WENZEL

By: Richard W. Osman  
Sheila Crawford  
Henry Bernstein  
Attorneys for Defendant  
**KEVIN MURRAY**